

April 22, 2010

Mr. Kirkpatrick called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. He read the Sunshine Statement.

Members Present: Mr. Nace, Mrs. Corcoran, Mr. Badenhausen, Mr. Ryland,  
Mr. Kastrud (7:05 p.m.), Mr. Ford, Mr. Kirkpatrick

Members Absent: Mr. Severino, Mr. Bischoff, Mr. Walchuk, Mr. Taibi

Others Present: Atty. Mark Anderson, Peter McCabe, Carl Hintz, Atty. John  
Sullivan, Steve Parker, Atty. Lloyd Tubman, John Madden,  
Christine Hill, Scott Eichlin

**Approval of Minutes:** Mr. Ford made a motion to approve the amended minutes of the March 11, 2010 workshop meeting. Mr. Badenhausen seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Mr. Ford made a motion to approve the minutes of the March 25, 2010 regular meeting. Mr. Badenhausen seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

**MBP Group: Block 12, Lot 8.03, Charlestown Road:** Atty. John Sullivan, representing MBP, gave a brief overview of the bi-furcated application. Atty. Anderson had reviewed the Notice Documents and found them to be in order, giving the Board jurisdiction to hear the matter. Mr. Sullivan said the Use Variance matter would be heard tonight and if approved, applicant would return for site plan approval. Atty. Sullivan said Steve Parker is the witness. Mr. Parker is a licensed engineer and professional planner and would be testifying, essentially, as a planner tonight. Atty. Sullivan said the plan submitted was a Variance Map, dated March 5, 2009, revised November 11, 2009. The Plan consists of two sheets that were prepared by Mr. Parker.

Atty. Sullivan asked Mr. Parker to come forward. Mr. Parker was sworn by Atty. Anderson. Mr. Parker stated his credentials. They were accepted by the Board. The property consists of 6.9 acres. Applicant proposes dedicating .3 acres as a road right-of-way, reducing the size to 6.6 acres. The property is in the PC District, as well as the Highlands Preservation Area. A single-family dwelling is not permitted in the District. Applicant is seeking the variance to permit the construction of a single-family dwelling. Mr. Parker described the property. He said there is a single-family dwelling north of the property, a utility maintenance structure for Elizabethtown Gas south of the property and across the Road is State-owned land. Atty. Sullivan submitted an Aerial View of the property and surrounding properties. The subject property was outlined in black. The Aerial View was marked Exhibit A-1 with a date of April 22, 2010.

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Mr. Parker said a gas line runs through the MBP property. There is a stream in the southwest part of the property with associated wetlands. He said the wetlands have been delineated and illustrated on the Plan. Mr. Parker said applicant proposes construction of a single-family home in the middle of the lot. The existing driveway will be utilized to access the proposed home. He said very little clearing would be required for the development of the property. Mr. Parker said no bulk variances would be required. He said the proposal is under that which is allowed in the PC District and is suitable for the area. Mr. Parker said development of the property would enhance the purposes of the Land Use Law. The proposal should qualify for an exemption from Highlands Regulations because the amount of disturbance is less than one acre and the amount of impervious coverage is less than 1/4<sup>th</sup> of an acre. Mr. Parker said the granting of the variance would not be detrimental; it would be an improvement. Neither would development of the property impair the intent and purpose of the Zoning Ordinance.

Atty. Sullivan referenced Kevin Smith's letter dated December 11, 2009. He asked Mr. Parker to address the issue raised by Mr. Smith about Highlands environmental constraints and their impact on development of the property. Mr. Parker said most of the site is rendered unusable because of the constraints; however, the proposal to construct a single-family dwelling should qualify for a Highlands exemption. Mr. Parker addressed the 300-foot buffer associated with the Highlands Open Waters. He said the location of the buffer has not been confirmed by the NJDEP. Applicant does not have an LOI. If the variance is approved, a site plan will be submitted and applicant will apply for an LOI.

Mr. Parker addressed the Critical Wildlife Habitat issue. In accordance with requirements of the Township Site Constraint Calculations, it would appear nothing could be built on the lot. Mr. Kirkpatrick said the Ordinance requires that when work is being done in a Critical Wildlife Habitat a letter must be obtained from the NJDEP indicating that the project will not jeopardize any of the wildlife. Mr. Kirkpatrick said that letter should be obtained as part of the site plan application. Atty. Sullivan referenced the December 11, 2009 letter regarding limiting disturbance of the site for the construction of the single-family dwelling. Mr. Parker said his experience has been that when a Highlands exemption is granted, the NJDEP allows for up to an acre of disturbance. The remaining land must be preserved in a conservation easement. Applicant is amenable to that requirement. Mr. Parker reiterated that he believes the site can be developed without any substantial detriment to the Land Use Ordinance. Soil tests have been performed to demonstrate that the site is suitable for construction of a septic system. Specifics would be part of the site plan. Atty. Sullivan said he had no further questions of Mr. Parker.

Mr. Kirkpatrick asked for questions from the Board. Mr. Ford asked Mr. Parker about the dirt and stone storage area shown on the Plan. Mr. Parker said he understood that applicant uses the property as a drop-off site for mulch materials. He does not think a business is operated out of the site. Mr. Badenhause asked how much of the wooded area would be removed. Mr. Parker said the Plan shows a small area in front of the proposed dwelling that would have to be cleared to accomplish necessary grading, as well

as installation of the septic system. He said the total area of disturbance would be approximately 30,000 square feet; 20% of that would be newly cleared. Mr. Kirkpatrick said applicant would have to comply with the Tree Protection Ordinance. Compliance would include an inventory of the size and species of the trees to be removed, as well as a tree-replacement plan. Information would be provided at the time of site plan application. Mr. Kastrud noted that the two homes north of the site appear to be set back further from Charlestown Road than the proposed dwelling. He asked Mr. Parker if the proposed dwelling could be set back further. The location of the dwelling was proposed in order to minimize disturbance into the steep slope and wetland buffer areas. Mr. Parker indicated applicant would consider relocation of the dwelling. Mr. Kastrud asked if it would be harder to obtain transition-area averaging in the Highlands when asking for an exemption. Mr. Parker said he did not know. Mr. Kirkpatrick asked Mr. Parker if he would be requesting an exemption from the 150-foot Wetlands Buffer, not the 300-foot Highlands Open Water Buffer. Mr. Parker said that was correct. Applicant was outside of the Wetlands Buffer area.

Mr. Kirkpatrick indicated the Board was not approving the location of the house at this time. The application before the Board was for a use variance. Mr. Kirkpatrick said applicant might want to consider moving the house back and/or provide an averaging plan, as part of the site plan. Mr. Hintz said residential and commercial districts both have 75-foot front yard setbacks. The proposed dwelling has a 77-foot front yard setback. Mr. Hintz said it appears applicant would have to apply for a Highlands No. 2 Exemption. He said exemptions are generally granted if the lot was in existence as of August 2004. Mr. Parker believes the lot existed at that time. Mr. Hintz had issued a letter dated January 21, 2010. The letter pointed out various environmental factors that would have to be complied with at the time of site plan.

Mr. Kirkpatrick asked for questions/comments from the Public and additional discussion from the Board and Professionals. There were none. Mr. Kirkpatrick asked for a motion. Mrs. Corcoran made a motion to approve the application. Mr. Kastrud seconded the motion. Atty. Anderson had a question. He said there was a list of items to which this approval may be subject. Mr. Anderson wanted to know if the motion and second was that the use variance approval was subject to those items, or were they being approved subject to site plan approval. For instance, if the dwelling was re-sighted to a different location on the lot, was that an approval that would continue with the lot, or would applicant have to return for a use variance. Mr. Kirkpatrick said he understood that the motion was that the Board was approving only the use, subject to site plan approval. Vote: Ayes: Mrs. Corcoran, Mr. Kastrud, Mr. Nace, Mr. Badenhausen, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick.

**YMCA/Bethlehem Presbyterian Church: Block 25, Lot 15, 2 Race Street:**

Mr. Ford recused himself prior to the Hearing. He is a member of the Church. Atty. Lloyd Tubman was present on behalf of applicant. She said the YMCA proposes relocating its existing pre-school into the Bethlehem Presbyterian Church.

Ms. Tubman said there were two processes on the agenda. One is the issue of completeness and the other is a request for an Ordinance Interpretation that the preschool use in the Church is a permitted ancillary use. and in the alternative, variances, potentially for use because the school is not permitted in the CR District, alternatively for a variance for two principle uses, if the Board determines that a school is not ancillary and is a separate use on the lot. Schools are, however, permitted in the CR District. In that case, a variance for deviation from a condition of a conditional use would be required because applicant does not meet the lot-size requirement for a school.

Atty. Tubman referenced the matter of completeness. She said Mr. Clerico sent a letter to the Board recommending that the application not be deemed complete on the basis that applicant had not submitted a variance checklist. Atty. Tubman understood that Mr. Clerico advised the Board later that she had requested a complete waiver of Checklist C for variances in her cover letter. Ms. Tubman asked the Board Chairman if she could distribute copies of the Checklist to demonstrate that there is nothing relevant in that List to what is proposed. She said it would, in fact, create an extraordinary expense to the YMCA. Mr. Kirkpatrick was amenable to Atty. Tubman's request. Mr. Kirkpatrick asked Ms. Tubman to describe any physical improvements proposed. She said the only physical improvement to the site would be the addition of a fence. The Department of Community Affairs requires the fence. The fence would be in a cleared area. There would be no footings or foundations for the playground equipment, all of which is moveable. Atty. Tubman did not think that a site plan would be required since the equipment is movable.

Atty. Anderson had reviewed notices. A waiver of notice was granted by the Township at their meeting held on April 21, 2010. Atty. Tubman said the notice requirements were no longer defective. Ms. Tubman asked if the Board had reviewed Checklist C and saw the burden compliance with the Checklist would create. Mr. Kirkpatrick indicated that granting the waiver was reasonable. Mr. Kirkpatrick said he would view the project as a variance for a second principle use on the property. He did not have a problem with granting a complete waiver of Checklist C provided that an adequate description of the existing facilities, the number of students and adequacy of the septic system for the proposal be given. Atty. Tubman believed applicant could provide that information. However, she asked that the issue of completeness for the variance be addressed, withholding judgment on the matter of the second principle use. Mr. Kirkpatrick was amenable. Atty. Anderson said the Board should take action on completeness. He said Atty. Tubman requested that if the Board deems the application complete, she be permitted to proceed on the application itself.

Mr. Kirkpatrick asked for a motion to deem the application complete or incomplete. Mrs. Corcoran made a motion to deem the application complete, without complying with the Schedule C Checklist. Mr. Ryland seconded the motion.

Vote: Ayes: Mrs. Corcoran, Mr. Ryland, Mr. Nace, Mr. Badenhausen, Mr. Kastrud  
Mr. Kirkpatrick

Atty. Tubman proceeded with the application for an Interpretation or in the alternative a variance. She had two witnesses, Christine Hill, Director of YMCA Preschool Activities, and Planner John Madden. Miss Hill was sworn by Atty. Anderson. She apprised the Board of her experience with the School. Miss Hill said the YMCA Preschool has been at the Clinton Presbyterian Church for forty years. The Clinton Church has other uses for the classrooms used by the YMCA. Arrangements have been made with Bethlehem Presbyterian Church. The YMCA would be using four classrooms that are used on Sunday for classes. Miss Hill said there are presently sixty students enrolled with the YMCA; however, all sixty are not at the School everyday. She said thirty students are enrolled in classes on Tuesday and Thursday and thirty students are enrolled on Monday, Wednesday and Friday. Miss Hill said the Office on Licensing would not allow more than thirty-two students on any day. She did not know the number of students attending Sunday School. However, the SS uses five classrooms and the YMCA will only be using four classrooms. The YMCA could have morning and afternoon sessions, however, there would not be more than thirty-two students at any time. The Staff would consist of five or six members. Children would be brought to the School by their parents and walked into the facility through a locked door. The present hours of operation are 9:00 a.m. until 1:00 p.m. Monday through Friday. The maximum number of hours would be 9:00 a.m. until 3:00 p.m. Miss Hill said she does run a 9:00 a.m. to 11:30 a.m. class for a certain age group. She said there could be an afternoon class for that group between the hours of 12:00 p.m. and 2:00 or 2:30 p.m. Classes would never begin before 9:00 a.m. or be later than 3:00 p.m.

The Department of Community Affairs requires a playground and it must be fenced. All playground equipment is moveable. Atty. Tubman presented an Aerial View of the proposed location of the playground. It was marked Exhibit A-1. Ms. Hill said the playground would be located in a cleared area. Atty. Tubman noted that the size of the septic system was based on the number of seats in the Church and that would more than cover daytime use. Mr. Badenhause asked the ages of the children. Ms. Hill said they range from two-and-one-half to five years. Mr. Hintz said the Ordinance provides for schools as a Conditional Use, minimum lot area of ten acres, plus one acre for each one hundred students, access to a collector road, an outdoor play area that shall be screened from adjacent residential neighborhoods and adequate parking. Mr. Hintz asked Ms. Hill to describe the playground area and if there would be a need for screening. Ms. Hill said there would be a playhouse, tunnel, etc. no climbing equipment. Mr. Kirkpatrick said it appears the playground would be approximately 150-200 feet from the nearest neighbor and there is woods in between. Mrs. Corcoran asked the size of the playground. Ms. Hill said the size would be based on Guidelines per child. A maximum of ten children would use the playground at any time. The Church requested that the fence be eye pleasing from the road. Ms. Hill said PVC Fencing is proposed along the road and a chain link fence is proposed to the rear. No trees will be removed. Mr. Kirkpatrick asked Mr. Hintz his suggestion on the Interpretation matter. Mr. Hintz said it appears the application would be for two principle uses, as well as for the use itself, since the site does not have

ten acres. Atty. Anderson said the application would be for one or more D Variances, other than the Alternative of an Interpretation. Mr. Kirkpatrick said the most conservative thing would be to consider the use variance for a second principle use. Atty. Tubman said applicant would provide planning testimony. She had provided a copy of an Appellate Court Decision that, in her opinion, would be contrary to the use variance issue. Mr. Kirkpatrick said brief testimony from the Planner should be sufficient. John Madden presented his credentials. He was sworn by Atty. Anderson. Mr. Madden presented information on the Interpretation issue. He said the Ordinance defines an accessory use as one that is customarily associated with and is subordinate and incidental to the principle use. Mr. Madden said that six of the forty-one preschools listed in the local telephone directory are operated as part of a house of worship. He said the Appellate Case that Atty. Tubman referenced noted that one third of the child-care centers in the United States is religiously affiliated. Use Regulations in the Ordinance 30-5.5 C-10 state that a child-care center may be an accessory use to a house of worship. Mr. Madden said a child-care center is similar to a preschool. He said there is sufficient parking and good circulation. Mr. Madden said that concluded his testimony regarding Interpretation.

Mr. Madden next presented testimony on the use variance issue. He said the site is well suited for the proposed use. A preschool is an inherently beneficial use. The State Legislature noted that in adopting regulations for day care that 50% of women are working today and there is a need for affordable care. He said the proposed use is non-commercial and not-for-profit, institutional in nature with its association with the YMCA. It should be considered of value to the community since it provides affordable care. Mr. Madden said in terms of the MLUL, the proposed use would serve the general welfare because it is educationally based, is an affordable service to families and provides a safe setting for children because it is State licensed. Mr. Madden said it more than meets criteria for a day care center. He said the requirement for a playground is 100 square feet per child. Mr. Madden said there is adequate space for parking and circulation as children are dropped off and walked to the Preschool. Mr. Madden said the proposal is a good example of efficient use of property. The Preschool would serve the public good. There would be no impact on adjacent uses and minimal impact on the site because of the limitation on the number of students and the hours of operation. Mr. Madden said Mr. Hintz had pointed out that schools are a Conditional Use; however, the property does not meet the ten-acre requirement. Mr. Madden feels the benefits outweigh the detriments. He does not think there would be any detriment to the community. Mr. Madden asked for questions. Atty. Tubman also asked for questions.

Mr. Kastrud referenced the maximum number of students at thirty-two. He wanted to know who dictated that number and if the YMCA would ever use the fifth classroom. Ms. Hill said the number of students is controlled by the Office of Licensing. Also, they have no plans to use the fifth classroom. The Church uses that for a nursery. Mr. Kastrud also referenced the noise issue. He asked if the property owner to the west was notified. Atty. Tubman said all property owners within 200 feet of the property were

notified. Waivers were granted by the New Jersey Water Supply Authority and Franklin and Union Townships. Ms. Hill said there would be no activities after 3:00 p.m. Graduations are held during the day. Atty. Anderson had questions for Mr. Madden, particularly on the matter of Interpretation. Mr. Anderson asked if the Board were to grant an Interpretation, that would apply regardless of the physical facilities, would it not? for instance, that a preschool is an accessory use in an existing Sunday School Classroom would apply in another situation even if there was no parking. Mr. Madden said that was correct. If the Board granted approval by variance, it would inherently be limited to this particular site. Mr. Madden said that was also correct.

Atty. Anderson said an Interpretation would, perhaps not in every situation, but in general, if it was granted for this house of worship; would not apply to every other house of worship in the Township. Atty. Anderson said there were a number of comments about the use being non-commercial. Mr. Anderson asked what he said would be a hypothetical question. What would preclude the variance from being used at some later time for a commercial school? Mr. Madden said when he talked about the non-profit or commercial aspect, he was relating it more to the accessory use. He said there are other non-profit uses that occur at the Church which have been accepted in the community. Mr. Madden said he was not arguing that commercial daycare would enjoy the same accessory use classification. He said another commercial operation that might have some association with the Church would not be clearly accessory. Mr. Madden said the key is non-profit. Anything the Church does that is related to non-profit gives the color of an accessory use. Atty. Anderson said he is having difficulty with that because the Church would not be operating the facility. He knows it will be operated by another non-profit entity. Mr. Madden emphasized that the Church hosts other activities that they do not operate. That is what he meant by an accessory use. He believes the Church considers offering of their facilities a part of their mission. Atty. Anderson said he was still troubled. How do we know the Church's mission is to only host non-profit activities? Why couldn't they host a commercial activity, assuming they felt it fell within their mission, i.e. a for profit preschool? Atty. Tubman said there would be tax consequences. Mr. Anderson said he understood; however, that was not a land use issue.

Lastly, Atty. Anderson noted that Mr. Madden surveyed the area and found there were six preschools that operated in houses of worship. Mr. Madden said the survey was made by looking in the telephone book. Mr. Madden said he did not know how those preschools were approved. Mr. Kirkpatrick asked for questions from the Board. There were none. Mr. Kirkpatrick asked for a motion on Interpretation, with a yes vote indicating that a variance for a second principle use on the property is our Interpretation of the application. A no vote would indicate it was a permitted use. Mr. Kirkpatrick said his concern was that voting no would open up every location for this type of use without any type of Planning Board or Board of Adjustment review.

Atty. Tubman said her client had no objection to the Board voting yes on the question posed by the Chairman and moving on to the variance. She understood his concern, even though she said she may not agree with it.

Mrs. Corcoran made a motion to consider the application as a second principle use of the property. Mr. Kastrud seconded the motion. He was not comfortable calling the application an accessory use. Mr. Kastrud referred to Atty. Anderson's comment about it applying to other similar situations. Atty. Tubman said she did not intend to pursue the argument.

Vote: Ayes: Mrs. Corcoran, Mr. Kastrud, Mr. Nace, Mr. Badenhausen, Mr. Ryland  
Mr. Kirkpatrick

Mr. Kirkpatrick said the next item to consider was whether to grant the variance with any potential conditions for allowing this particular use at the Church. Mr. Kastrud said if approved, it should be qualified that it would only be for non-profit use. Mr. Kirkpatrick had a question about the fifth remaining classroom. Ms. Hill said it is equal to one of the other classrooms. The classrooms are not all the same size. Each of the classrooms will have an average of eight students.

Atty. Anderson asked to review his notes for the Board and suggest conditions. He said it was up to the Board to decide the conditions. Mr. Anderson said one suggested condition was to limit the approval to four classrooms, out of the five that exist; (Mr. Kirkpatrick said he would prefer the approval be limited to all five classrooms, if their enrollment increased, they would not have to return for approval); a maximum of sixty children, with a maximum of thirty-two on the site at any one time, (Mr. Kirkpatrick preferred the maximum to be forty children) a maximum of six staff members (Atty. Tubman asked if that could be increased to eight (Mr. Kirkpatrick had no objection); ages of children would be two-and-one-half to five years; hours of operation, not earlier than 9:00 a.m. or later than 3:00 p.m.; playground to be located in existing cleared area adjacent to the parking lot, the area is sufficiently screened from an existing residential dwelling; fencing to be separated from the septic system area; limited to non-commercial use; playground size to be no greater than required by State regulation for five classrooms/maximum of 2,000 square feet, subject to limitations of the septic field;

Scott Eichlin, Church Member, came forward to provide testimony on the septic system. Mr. Eichlin was sworn by Atty. Anderson. He said the septic system was installed in 2000 when the Church was expanded. Documentation is on file. Mr. Eichlin said the septic area could be staked and fenced. He understood the Board's concern. Atty. Tubman asked about the maximum of sixty children. Ms. Tubman said there was a potential for a fifth classroom, as well as two shifts. She said the thirty-two and thirty-two are more than sixty. Mr. Kirkpatrick said there was a maximum of sixty enrolled, with no more than thirty-two on site at any one time. (SEE ABOVE, MAXIMUM OF FORTY?) Mrs. Corcoran said the number could be limited to the classrooms, the regulations limit the number of children. Ms. Hill emphasized she is limited by the State.



Mr. Badenhausen said forty was mentioned, with the potential for use of a fifth classroom. Mr. Kirkpatrick said the condition should limit the number of children on site at any time to forty and eliminate the maximum of sixty. Atty. Tubman said that was acceptable and covers the potential use of the fifth classroom. Mr. Ryland asked if the hours of 9:00 a.m. to 3:00 p.m. was too restrictive. It was the consensus of the Board that those hours were appropriate.

Mr. Kirkpatrick asked for comments from the Public. There were none. Atty. Anderson asked about the number of rooms in the Church complex. Ms. Hill said there are more than five. Mr. Eichlin said the YMCA would be using the five rooms that are in the original section of the Christian Education Building.

Mr. Kirkpatrick asked for a motion for approval, subject to the conditions discussed. Mrs. Corcoran made a motion to approve the variance for a second principle use, subject to the conditions discussed and corrected. Mr. Badenhausen seconded the motion. Vote: Ayes: Mrs. Corcoran, Mr. Badenhausen, Mr. Nace, Mr. Ryland, Mr. Kastrud  
Mr. Kirkpatrick

Atty. Tubman thanked the Board.

**Correspondence:** None

**Motion to Adjourn:** Mr. Nace made the motion to adjourn. Mr. Kastrud seconded the motion. (8:40 p.m.)

Grace A. Kocher, Secretary